

### **REMARKS**

Claims 1-9 are pending in the case. No claims are amended or canceled with this response. The Examiner requires restriction under 35 U.S.C. 121 to one of two groups of claims identified as follows:

Group I.      Claims 1-3, and 8-9, drawn to a filled snack and process of making it, classified in class 426, subclass 94.

Group II.      Claims 4-9, drawn to process of making a filling and product containing such filling, classified in class 426, subclass 572.

### **Restriction Requirement**

Applicants' representative assumes that the Examiner's reference to Claims 4-9 in Group II is a typographical error, as this group overlaps with those claims identified for restriction in Group I. It is assumed that the Examiner meant Claims 4-7, rather than Claims 4-9; accordingly, for purposes of this response, Group II is assumed to include only Claims 4-7. Clarification and correction by the Examiner is respectfully requested.

Applicants respectfully traverse the Restriction Requirement and submit that the claims of both groups designated by the Examiner are closely interrelated from a patentability assessment standpoint. In addition, Applicants maintain that the claims of the two designated groups have not actually acquired a separate status in the art, notwithstanding different art classifications which may be artificially assigned for mere cataloging purposes. Therefore, in order to preserve the unity of the invention, both groups should be prosecuted in the same application. Prosecuting both groups together would eliminate duplication of search efforts, thereby simplifying Patent Office examination work.

In the event the Examiner persists in the Restriction Requirement, Applicants hereby affirm the election of claims 1-3 and 8-9 for prosecution, holding claims 4-7 in abeyance for prosecution in a separately filed continuation application.

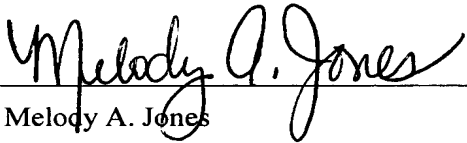
### **Conclusion**

In view of the foregoing remarks, Applicants respectfully request that the Examiner withdraw the Restriction Requirement and allow claims 1-9 to be prosecuted in the same application. In the event that the Examiner's Restriction Requirement is made final, Applicants reaffirm the provisional election of claims 1-3 and 8-9 above for continued prosecution, holding

claims 4-7 in abeyance under the provisions of 37 C.F.R. 1.142(b) until final disposition of the elected claims.

Respectfully submitted,

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